> ADEA, Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 120 S.Ct. 631, 145 L.Ed. 2d 522 (2000); or the ADA, Bd. Of T'ees of the Univ. of Ala. V. Garrett, 531 U.S. 356, 121 S.Ct. 955, 148 L. Ed. 2d 866 (2001)(Title I), Williamson v. Ga Dep't of Human Resources, 150 F. Supp. 2d 1375 (S.D. Ga. 2001)(Title II); see also Ass'n for Disabled Ams., Inc. v. Fla.Int'l Univ., 178 F.Supp.2d 1291, 1293-94 (S.D. Fla. 2001)(collecting case in title II context). Accordingly, Defendant is entitled to summary judgment on the basis of sovereign immunity with respect to all of Plaintiff's claims except those arising under Title VII. See Fitzpatrick v. Bitzer, 427 U.S. 445, 99 S.Ct. 2666, 49 L.Ed. 2d 614 (1976)(holding Congress expressly and validly abrogated state sovereign immunity under title VII). Accordingly, Defendant's Motion for Summary Judgment [70-1] is hereby **GRANTED in part**." See Appendix A, p. 12a-13a

On May 31, 2005, the United States Court of Appeals for the Eleventh Circuit stated in an unpublished opinion:

> "A. Sovereign Immunity
>
> The district court granted summary judgment to the DOT on Stephens' § 1983, ADA, and

> ADEA claims after finding that the DOT had immunity pursuant to the Eleventh Amendment. Stephens brought her claim solely against the Georgia department of transportation. As an arm of the state, the DOT is entitled to the same sovereign immunity of the state itself. Robinson v. Ga. Dep't of Transp., 966 F.2d 637, 640 (11th Cir. 1992). Congress has not abrogated immunity for claims brought pur .ant to § 1983, the ADEA, or the ADA. See id. (holding that the Eleventh Amendment barred plaintiff's § 1983 against georgia DOT); Kimel v. Fla Bd. of Regents, 528 U.S. 62, 120 S.Ct. 631 (2000)(holding that the ADEA did not validly abrogate eleventh Amendment immunity); Bd. Of Trs. of Ala. V. Garrett, 531 U.S. 356, 121 S.Ct. 955 (2001)(holding that state agencies were entitled to Eleventh Amendment immunity from employes' claims brought pursuant to the ADA). Therefore, the district court's grant of summary judgment on these claims was proper" See Pet. App. Vol.1, p.8, Nov.14, 2005.

It is the Petitioner's contention the Eleventh Circuit did not address the sufficiency of Petitioner's allegations under Title II. Instead, relying on its prior decision in Robinson v. Ga. Dep't of Transp., 966 F.2d 637, 640 (11th

Cir. 1992), the Court of Appeals affirmed the District Court's holding that Petitioners Title II claims for money damages against the Department of Transportation were barred by sovereign immunity.

The United States District Court stated in its April 21, 2004 order:

> "The Court cautions the parties that because Defendant is entitled to immunity with respect to the § 1983, ADEA, and ADA claims, the Court will not consider evidence or arguments related to Plaintiff's constitutional, age, or disability claims." See App. A, p.13a. § 2, ¶ 2.

It is the Petitioners contention the District Court severely circumscribed the Petitioner's presentation of evidence. See App. D., p.30a- 31a.

DISCUSSION

The December 29, 2005 letter from C. Vasil, Chief Deputy Clerk of the Court to the petitioner states:

"The motion to defer consideration of the above-

entitled petition for a writ of certiorari was received December 27, 2005, and is herewith returned. The Court does not make public that a pending case is being held for a case in which certiorari was granted, nor does the Court act on motions to hold a case for a granted case." See App. E., p. 35a.

The cases of United States v. Penaranda, (U.S. July 13, 2004)(No. 04-59), United States v. Fanfan, (U.S. July 21, 2004)(No. 04-105), United States v. Booker, 543 U.S. ____ (2005), (U.S. July 21, 2004)(No. 04-104) were docketed on July 13, 2004 and July 21, 2004 at this court.

On July 23, 2004 a petition for rehearing was filed in the case of Rideout v. United States (U.S. March 17, 2004)(No. 03-9402). See Appendix G, p. 50a. Page 5 of the July 23, 2004 Rideout petition for rehearing states:

> "At a minimum, a final decision on Mr. Rideout's certiorari petition should await final disposition of Booker, Fanfan, and Penaranda,

followed by remand to the United States Court of Appeals for the Fourth Circuit for further consideration."

After reviewing the docket sheets for the cases of United States v. Penaranda, United States v. Fanfan, United States v. Booker it appears as if the Court did defer or hold a decision in Rideout v. United States (U.S. March 17, 2004)(No. 03-9402) until the Courts decision in the cases of Booker, Fanfan, and Penaranda.

Petitioner's respectfully advances that it is unfortunate that a party proceeding before this Court must file a petition versus a motion in order to request the Court to defer or hold a case for another case presently before the Honorable Court. Again, if the Petitioner's case had received the same consideration, i.e. one more day to consider petition for certiorari by this Honorable Court, as the case of Rideout v. United States (U.S. March 17, 2004)(No. 03-9402), the Petitioner's petition for certiorari would have

been denied after the Honorable court entered judgment in U.S. v. Georgia and Goodman v. Georgia, 546 U.S. ____(2006) on January 10, 2006.

It is the petitioners contention when the Respondents counsel filed the waiver with the court intending not to file a response on behalf of the Respondent at least three days early the instant civil action resulted in the instant case being assigned to the conference of January 6, 2006 versus January 13, 2006. Obviously, after the courts decision in the cases of United States v. Georgia and Goodman v. Georgia, 546 U.S. ____ (2006)((U.S. March 9, 2005)(No. 04-1203)(Goodman March 9, 2005)(No. 04-1236).

CONCLUSION

Pursuant to Supreme Court Rule 29.4(b); Title 28 U.S C. § 2403(a) may apply to the instant case and the lower federal courts in Georgia did not certify to the Attorney General the fact that the constitutionality of an Act of

Congress was drawn into question. After more than three years of litigation with the Respondent it is the petitioners contention that the instant case hinged on one day before this Honorable Court and the recent clarification of the Honorable Courts position with respect to Title II of the Americans with Disabilities Act of 1990 and the Fourteenth Amendment as rendered in cases of United States v. Georgia and Goodman v. Georgia warrants rehearing on the denial of petitioner's certiorari petition.. At a minimum, a final decision on petitioners certiorari petition should await final disposition of Marshall v. Marshall, (Marshall May 17, 2005)(04-1544), followed by remand to the United States Court of Appeals for the Eleventh Circuit for further consideration and/or further consideration with respect to United States v. Georgia and Goodman v. Georgia

Respectfully submitted,

Irene L. Stephens

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APPENDIX A -
OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA DATED APRIL 21, 2004

[Filed April 23, 2004]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IRENE L. STEPHENS	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	
	:	1:02-CV-1608-RWS
GEORGIA DEPARTMENT OF TRANSPORTATION	:	
	:	
Defendant.	:	

ORDER

Plaintiff Irene L. Stephens filed this employment discrimination suit against her former employer, Defendant Georgia Department of Transportation "Defendant" or "GDOT"). Now before the Court for consideration are: Defendant's Motion for Summary Judgment [62-1]; Plaintiff's Motion for Reconsideration [65-1]; Plaintiff's Motion for Enlargement of Time [66-1]; Plaintiff's Motion to Extend Time [67-1]; Defendant's Motion to Dismiss [70-1]; Plaintiff's Motion to Strike [81-1]; and a Consent Motion to Extend Discovery Until 5/10/2004 [88-1]. Having considered the entire record, the Court enters the following Order.

I. Procedural History

Plaintiff filed this case on June 11, 2002, at which time it was assigned to Judge Beverly B. Martin. Plaintiff filed an amended Complaint on January 9, 2003; Judge martin denied Defendant's Motion to dismiss thereafter.[1] The case was assigned to a four-month discovery schedule, and discovery was set to end on September 8, 2003. At the parties' joint request, the Court extended the discovery period through November 7, 2003 by an order entered September 10, 2003. The Court again extended discovery until January 7, 2004 by a Consent Order entered November 4, 2003.

Meanwhile, Plaintiff moved to recuse Judge Martin. That Motion was granted and this case was reassigned to the undersigned. Defendant filed another motion to extend the discovery period because Plaintiff refused to be deposed when she appeared for her December 10, 2003 deposition. Defendant also filed a motion to compel Plaintiff's deposition and to compel Plaintiff fo produce certain documents. Plaintiff thereafter filed a motion to amend the complaint and two motions to extend discovery. These two motions to extend discovery were based on (1) Plaintiff's expectation that she would be allowed to amend the complaint; and (2) Plaintiff's argument that Defendant had failed to comply with Federal Rule of Civil Procedure 26(a)(2)(B) in its notice to depose Plaintiff's expert.

By an Order entered February 9, 200 63-1](the "February 9 Order), this Court denied Plaintiff's motion to amend, mooting her request to extend discovery on her proposed additional claims. The Court also rejected Plaintiff's argument

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[1] The Motion to Dismiss was based on Federal Rules of Civil procedure 41(b) and 12(e). Defendants did not move to dismiss for failure to state a claim upon which relief could be granted under Rule 12(b)(6).

that Defendant had failed to comply with Rule 26(a)(2)(B). Further, the Court extended discovery so that Defendant could take Plaintiff's deposition and the Court ordered Plaintiff to produce the documents Defendant had move to compel within ten days of the entry of the Order. Finally, the Court granted Plaintiff a leave of absence from February 9, 2004 until February 29, 2004. The Court made clear, however, that while Plaintiff would not be required to appear for a deposition or hearing during that time, she would not be excused from timely filing "any pleadings, motions, briefs, or responses that may be due during the period of her leave." (Order of Feb.9, 2004 at 7; see also id. At 8 n.1 (further emphasizing that Plaintiff was not excused from producing documents due to her leave of absence).)

Several of the now-pending motions arise from issues related to the February 9 Order. Also pending is Defendant's Motion for Summary Judgment, which Defendants timely filed following the close of the discovery period as was scheduled prior to entry of the February 9 order.

II. Motion for Reconsideration

Plaintiff asks the Court to reconsider its ruling in the February Order, wherein the Court denied her motion to amend the complaint. A motion for reconsideration should not be used to reiterate arguments that have been made previously, but "should be reserved for certain limited situations, namely the discovery of new evidence, an intervening development or change in the law, or the need to correct a clear error or prevent a manifest injustice." Deerskin Trading Post, Inc. V. United Parcel Serv. Of Am., Inc., 972 F.Supp 665,674 (N.D. Ga. 1997). Moreover, a motion for reconsideration may not be used to offer new legal theories or evidence that could have been presented in a previously filed motion or response, unless a reason is given for failing to raise the issue at an earlier stage in the litigation. Escareno v. Noltina Crucible & Refractory Corp., 172 F.R.D. 517, 519 (N.D. Ga. 1994)(citing O'Neal v.Kennamer, 958 F.2d

1044, 1047 (11th Cir. 1992)).

Here, Plaintiff's motion argues the merits of the claims she wished to add to this case, rather than providing bases for amendment. She either reiterates arguments that she made previously or presents new arguments without providing any reason for failing to do so earlier. This showing does not meet the standards for reconsideration and accordingly, Plaintiff's motion for reconsideration and accordingly, Plaintiff's Motion for Reconsideration [65-1] is hereby **DENIED**.

Plaintiff argues that "if the Honorable Court chooses to deny Plaintiff the right to [amend her complaint]," she will "[f]ile a lateral Federal Civil Rico Complaint, incorporation Plaintiff breach of contract claims, naming the instant Defendant, The Office of the Attorney General, Thurbert Baker, Bryan K. Webb and Mr. Ralph William Ellis, and G. Melton Mobley, as well as other persons and parties who have assisted the Defendant in their fraudulent conduct." (Pl.'Mot. For review and Reconsideration [565-1] at 23.) Plaintiff argues that allowing her to amend the complaint will thus save judicial time and resources. (Id. At 24.) She further writes that if the Honorable Court chooses to deny Plaintiff's instant motion, the Plaintiff will legally expand the litigation against the Defendant." (Id. at 24 n.9.)

This Court was well within its discretion in denying Plaintiff's motion to amend the complaint; of course, Plaintiff may challenge this decision on appeal. Generally, a party may not make an end-run around the denial of a motion to amend by attempting to file a new case asserting the proposed amendment; this practice is governed by the doctrine of res judicata. Hrabe v. Paul revere Life Ins. Co., 76 F. Supp. 2d 1297, 1304 (M.D. Ala. 1999); United States v. McGann, 951 F. Supp. 372, 379 (E.D.N.Y. 1997).

Plaintiff's motion to amend sought to add breach of contract claims stemming from the circumstances surrounding her job with Defendant, fraudulent inducement based on her acceptance of employment with Defendant and intentional infliction of emotional distress arising from Defendant's actions

surrounding her termination. From her Motion for Reconsideration, it appears that Plaintiff plans to bring a new case alleging similar claims arising out of the same facts at issue in this case. Base on Plaintiff's representation, it appears that Plaintiff would not be entitled to file the new suit she describes.

The Court is concerned that Plaintiff is unable to curb her propensity for making frivolous filings. Indeed, this Court has already had occasion to enjoin Plaintiff from removing cases to this Court without obtaining leave from the Court. See Equity Mgmt. Co. v. Stephens, No. 1:03-CV-1611-RWS (N.D.Ga. entered June 30, 2003). The Eleventh Circuit recognizes this Court's authority to impose restrictions on Plaintiff's ability to file. See generally Procup v. Strickland, 792 F.2d 1069 (11th Cir. 1986)(outlining potential restrictions). As Procup explained: "Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions . . . The court has a responsibility to prevent single litigants from unnecessarily encroaching on the judicial machinery needed by others." Id. at 1073-74 (internal citations omitted).

Based on Plaintiff's representations to the Court about her desire to file RICO and contract claims against the Defendant, and her other conduct in this case and in previous cases, the Court finds that it is necessary to further enjoin Plaintiff to protect the Court's jurisdiction. Accordingly, the Court hereby **ENJOINS** Plaintiff Irene L. Stephens from attempting to open a new action arising out of the facts in this case or as set forth in Plaintiff's Motion to Amend [52-1] against Defendant, the Georgia Office of the Attorney General, Thurbet Baker, Bryan K. Webb, Ralph William Ellis, and/or G.Melton Mobley without complying with the following procedures. If Plaintiff wishes to file such a case, she must submit a Petition for leave fo File, along with a proposed document for filing and a copy of this Order, to this Court for consideration. The Clerk is hereby **DIRECTED** that if Plaintiff submits such a Petition, the Clerk shall forward the Petition and accompanying documents to the undersigned for consideration. The Clerk is further

DIRECTED not to open a case file in such circumstances until this Court issues an Order so directing. If Plaintiff fails to comply with this Order by submitting a document for filing without a Petition and copy of this Order, the Clerk is **DIRECTED** to return the document to Plaintiff.

As a related matter, Plaintiff's Motion to Strike Defendant's Response to Plaintiff Motion for Reconsideration [81-1] offers no basis for so doing and is hereby **DENIED**. Plaintiff has also submitted a Supplement to her Motion to Strike [85-1]; this document is not contemplated by the Local Rules and is not accompanied by a motion requesting leave to file it; accordingly, the Court disregards it. N.D. Ga. Local R.7.1.

III. Plaintiff's Motions for Extensions and Defendant's Motion to Dismiss

As described above, Plaintiff was required to produce the documents requested in Defendant's Motion to Compel[43-1] within ten days of the February 9 Order, by February 24, 2004. On February 20, 2004, however, Plaintiff requested an extension of time until March 5, 2004, for filing those documents. Defendants filed a Motion to Dismiss because of Plaintiff's failure to obey the February 9 Order. The Court addresses each of these issues in turn.

A. Plaintiff's Motion for Enlargement

In her Motion for Enlargement [66-1], Plaintiff appears to argue that she should not be required to comply with the ten-day deadline because she also needed to file a motion for reconsideration within ten days of the February 9 Order.[2]

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[2] The Court notes that both parties appear to have miscalculated the ten-day time frame. See N.D. Ga. Local Rule 6.1A.

Federal Rule of Civil procedure 6(b)(1) provides that the court may grant an enlargement of time "for cause shown" if the request is made prior to "the expiration of the period originally prescribed or as extended by a previous order." Good cause requires at least as much as excusable neglect. Williams v. Publix Warehouse, 151 F.R.D. 428, 431 (M.D.Fla. 1993). The need to file another document within the same prescribed period does not constitute "cause" within the meaning of this Rule. See McLaughlin v. City of LaGrange, 662 F.2d 1385, 1387 (11th Cir. 1981)(per curiam)(a busy schedule does not amount to excusable neglect). Plaintiff's reasons for needing as extension are particularly inadequate given the Court's emphasis on her deadlines in the February 9 Order. Accordingly, Plaintiff's Motion for Enlargement is hereby **DENIED**. Plaintiff is **ORDERED** to produce the documents described in the February 9 Order immediately if she has not done so already.

B. Defendant's Motion to Dismiss

Defendant's Motion to Dismiss [70-1] is brought pursuant to Federal Rule of Civil Procedure 37 and is based on Plaintiff's failure to produce the compelled documents within the time frame ordered. Rule 37(b)(2) provides that a court may impose sanctions for failing to comply with a court order compelling discovery. A district court has discretion to dismiss a complaint for failure to comply with a court order when the party's recalcitrance is due to willfulness, bad faith, or fault. Phipps v. Blakeney, 8 F.3d 788, 790 (11th Cir. 1993); see also Gratton v. Great Am. Communications, 178 F.3d 1373, 1374 (11th Cir. 1999). This "most severe" sanction is disfavored and it is good practice for a district court to make findings as to why a lesser sanction will not suffice. Phipps, 8 F.3d at 791. Here, Defendant has not requested lesser sanctions and has not described why lesser sanctions , such as imposing costs upon

Plaintiff, would not suffice. Although Plaintiff's defiance of the February 9 Order causes great concern to this Court, the Court declines to impose the sanction of dismissal at this time. Plaintiff is admonished, however, that her failure to produce the documents as required herein could result in the Court holding her in contempt and requiring her to pay attorney's fees, among other sanctions, in the future. Accordingly, Defendant's Motion to Dismiss [70-1] is hereby **DENIED with a right to refile**.

As a related matter, Plaintiff's Motion to Enlarge Time to Respond to Defendant's Motion to Dismiss [78-1] is hereby **DENIED as moot** to the extent the Plaintiff's Motion is directed at Defendant's Motion to Dismiss [70-1].[3]

IV. Defendant's Motion for Summary Judgment
A. Plaintiff's Motions to Extend Time to Respond

In Plaintiff's Motion to Extend time to Respond to Defendant's Motion for Summary Judgment [67-1], Plaintiff seeks an extension of time until May 10, 2004, within which to respond to Defendant's Motion for Summary Judgment. As described above, the Court was very clear in its February 9 Order that Plaintiff would not be excused from timely filing "any pleadings, motions, briefs, or responses that may be due during the period of her leave." (Order of Feb. 9, 2004 at 7.) Defendant filed a Motion for summary Judgment on January 27, 2004. Plaintiff did not respond to the Motion within the twenty days required by the Local Rules. Instead, on February 26, 2004, Plaintiff filed the now-pending Motion to Extend Time.

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[3].Plaintiff's Motion for Enlargement [78-1] is also directed to her time to respond to Defendant's Motion for Summary Judgment and is discussed *infra* Part IV.A.

In her Motion, Plaintiff states that she is proceeding pro se and needs additional time to gather evidence. Because the Court extended discovery in its February 9 Order, moreover, Plaintiff submits that it is obvious that the "total legal picture has not been obtained" by either party. (Pl.'s Mot. to Extend [67-1] at 2.) According to Federal Rule of Civil Procedure 6(b)(2), the court for "cause shown" may grant an enlargement of time after the expiration of a deadline "where the failure to act was the result of excusable neglect." Plaintiff has shown neither good cause nor excusable neglect. Although the Court extended discovery, that extension was for Defendant's benefit because Plaintiff had refused to cooperate during her deposition and refused to respond to certain discovery.[4]
Further, Plaintiff has not identified what evidence she needs or provided a justification for failing to obtain that evidence within the multiple extensions of the discovery period that the Court has already granted. As noted above, moreover, a busy schedule does not amount to excusable neglect. McLaughlin, 662 F.2d at 1387. Nor, for that matter, does a party's pro se status entitle her to disregard deadlines. See Clark v. Bibb County Bd. of Educ., 174 F. Supp. 2d 1369, 1371 (M.D. Ga. 2001)(the Federal Rules of Civil Procedure must nevertheless be followed even by pro se litigant); see generally In re Belcher, 293 B.R. 265 (Bankr. N.D. Ga. 2001)(inexperience attorney proceeding pro se did not show excusable neglect where she misunderstood filing deadline and ha family responsibilities); Busch v. County of Volusia, 189 F.R.D. 687 (M.D. Fla. 1999)(finding no excusable neglect, even

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[4].In the February 4 order, the Court noted that Plaintiff had also made two request for an extension of discovery. Because the Court extended discovery for Defendants, the disposition of Plaintiff's motions was "granted;" a review of the bases for her notions, however, reveals that Plaintiff was not entitled to any additional discovery during this extension.

accounting for plaintiff's pro se status, for filing motion for new trial several months late). Because Plaintiff has failed to show good cause or excusable neglect, the Court **DENIES** Plaintiff's Motion to Extend Time [67-1]. Accordingly, the Court treats Defendant's Motion for Summary Judgment as unopposed. N.D. Ga. Local R. 7.1.B.

Relatedly, Plaintiff in her Motion to Enlarge Time [78-1] request an extension of time within which to respond to Defendant's Response to her Motion to Extend Time to Respond to Defendant's Motion for Summary Judgment. In essence, Plaintiff seeks an extension of time within which to file a reply to her own motion. Plaintiff raises no grounds for such an extension different from those already discussed, and-as set forth above-the parties have adequately addressed the issues in the Motion [67-1] and the Response [76-1]. Accordingly, Plaintiff's motion to Enlarge Time [78-1] is hereby **DENIED** as it related to a reply to Defendant's response to her Motion to Extend Time [67-1].

B. Standards on Motion for Summary Judgment

Summary judgment is appropriate only when the pleadings, depositions, and affidavits submitted by the parties show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court should view the evidence and any inferences that may be drawn in the light most favorable to the non-movant. Adickes v. S.H.Kress & Co. ,398 U.S. 144, 158-59, 90 S.Ct. 1598, 26 L.Ed. 2d 142 (1970). The party seeking summary judgment must first identify grounds that show the absence of a genuine issue of material fact. Celotex Corp. V. Catrett, 477 U.S. 317, 323-24, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986). The burden then shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257, 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986).

Even if a motion for summary judgment is unopposed, the movant must nevertheless show it is entitled to judgment on the merits, based on evidentiary materials in the record. See Dunlap v. Transam. Occidental Life Ind. Co., 858 F.2d 629, 632 (11th Cir. 1988)(district court did not err in treating motion for summary judgment as unopposed where it considered the merits of the motion). The district court "need not sua sponte review all of the evidentiary materials on file at the time the motion is granted," but it must at least review all those submitted in support of the summary judgment motion. United States v. 5800 S.E. 74th Ave., -F.3d-, 2004 WL 575094, at *2(11th Cir. Mar. 24, 2004). A district court's order granting an unopposed motion for summary judgment must indicate that the merits were considered. Id.

As described below, the Court determines that with respect to several of Plaintiff's claims, Defendant has clearly shown an entitlement to judgment as a matter of law. However, because of plaintiff's refusal to be deposed, there was not a full record available to Defendant at the time it filed its Motion for Summary Judgment. The Court finds that it will best serve the ends of justice to reserve ruling on some of Plaintiff's claims so that the parties may have an opportunity to more fully build the factual record.

C. Brief Background

Beginning in April 1999, Plaintiff was employed by Defendant as a Transportation Engineer Associate.[5] After numerous incidents in the fall of 2000, she was terminated for

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[5]The Court will set out a detailed discussion of the facts when it issues an Order on Plaintiff's remaining claims. The viability of the claims for which judgment will be entered herein does not hinge on the facts

insubordination, effective December 27, 2000. In Count One of the Amended Complaint, Plaintiff alleges violations of her due process and equal protection rights. In Count two, Plaintiff alleges employment discrimination. In Count Three, Plaintiff alleges "retaliation for exercising a legal right." Reading the Amended complaint broadly and in deference to Plaintiff's pro se status, the Court considers her to have alleged:(1) violation of due process and equal protection rights pursuant to 42 U.S.C. § 1983; (2) violation of Title VII of the Civil Rights Act of 1964; (3) violation of the Americans with Disabilities Act ("ADA"); and (4) violation of the Age Discrimination Employment Act ("ADEA").

D. Discussion

1. Soverign Immunity

Plaintiff sues on the Georgia Department of transportation. States and their agencies enjoy sovereign immunity pursuant to the Eleventh Amendment to the United States Constitution absent a waiver by the State or valid congressional abrogation. Pennhurst State Sch. & Hosp. V. Halderman, 465 U.S. 89, 99 1000, 104 S.Ct. 900, 79 L. Ed. 2d 67 (1984). As an arm of the state, Defendant is entitled to the same sovereign immunity of the state itself. Robinson v. Ga. Dep't of Transp., 966 F.2d 637, 640 (11th Cir. 1992).

Congress did not abrogate Eleventh Amendment immunity for claims brought under § 1983, Quern v. Jordan, 440 U.S. 332, 99 S.Ct. 1139, 59 L.Ed. 2d 358 (1979); the ADEA, Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 120 S.Ct. 631, 145 L.Ed. 2d 522 (2000); or the ADA, Bd. Of T'ees of the Univ. of Ala. V. Garrett, 531 U.S. 356, 121 S.Ct. 955, 148 L. Ed. 2d 866 (2001)(Title I), Williamson v. Ga Dep't of Human Resources, 150 F. Supp. 2d 1375 (S.D. Ga. 2001)(Title II); see also Ass'n for Disabled Ams., Inc. v. Fla.Int'l Univ., 178 F.Supp.2d 1291, 1293-94 (S.D. Fla. 2001)(collecting case in title II context). Accordingly, Defendant is entitled to summary judgment on the

basis of sovereign immunity with respect to all of Plaintiff's claims except those arising under Title VII. See Fitzpatrick v. Bitzer, 427 U.S. 445, 99 S.Ct. 2666, 49 L.Ed. 2d 614 (1976)(holding Congress expressly and validly abrogated state sovereign immunity under title VII). Accordingly, Defendant's Motion for Summary Judgment [70-1] is hereby **GRANTED in part**.

2. Title VII

Title VII makes it unlawful to discriminate against any individual with respect to her employment because of the individual's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-(a). Reading the Amended Complaint liberally, it appears that plaintiff alleges several theories cognizable under a Title VII claim: (1) that she was denied a transfer to the Office of Bridge Design and ultimately terminated because of her sex; (2) that she was a victim of disparate treatment; and (3) the she was retaliated against because of her sex.

As described above, the Court will afford the parties an opportunity to supplement the record on these Title VII claims **ONLY**. Thus, Plaintiff may have ten days for the entry of this Order within which to file a response to Defendant's Motion for Summary Judgment [70-1] on the Title VII claims. Defendant may have ten days thereafter within which to file a Reply on the Title VII claims. Both parties may attach to these documents any new evidence that has been obtained during the discovery extension. The Court cautions the parties that because Defendant is entitled to immunity with respect to the § 1983, ADEA, and ADA claims, the Court will not consider evidence or arguments related to Plaintiff's constitutional, age, or disability claims.

Conclusion

Defendant's Motion for Summary Judgment [62-1] is hereby **GRANTED in part**; the Court hereby **RESERVES RULING** as to Plaintiff's Title VII claims. Plaintiff shall have

ten days from the entry of this Order within which to file a response to defendant's Motion for Summary Judgment [70-1]; Defendant shall have ten days thereafter within which to file a Reply.

Plaintiff's Motion for Reconsideration [65-1] is hereby **DENIED.** Plaintiff is **ENJOINED** as set forth *supra* pages 7-8.

Plaintiff's Motion for Enlargement of Time [66-1] is hereby **DENIED**; Plaintiff is **ORDERED** to produce the documents described in the February 9, 2004 Order immediately if she has not done so already. Plaintiff's Motion to Extend Time [67-1] is hereby **DENIED**. Defendant's Motion to Dismiss [70-1] is hereby **DENIED with a right to refile**. Plaintiff's motion to Enlarge time [78-1] is hereby **DENIED as moot**. Plaintiff's Motion to Strike [81-1] is hereby **DENIED**. The Consent Motion to Extend Discovery Until 5/10/2004 [88-1] is hereby **DENIED as moot**.

SO ORDERED, this 21th day of April, 2004

s/
RICHARD W. STORY
UNITED STATES DISTRICT JUDGE

APPENDIX B -
OPINION OF THE ELEVENTH CIRCUIT
COURT OF APPEALS DATED SEPTEMBER 10, 1999

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-9573
Non-Argument Calendar

D.C. Docket No. 98-01583-1-CV-JEC

AUBREY S. WHELCHEL,

Plaintiff-Appellant,

versus

CITY OF COVINGTON, GEORGIA
CITY COUNSEL OF COVINGTON, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(September 10, 1999)

Before TOJOFLAT, BLACK and HULL, Circuit Judges

PER CURIAM:

Appellant Aubrey Whelchel appeals the district court's dismissal of his action brought pursuant to 42 U.S.C. § 1983 alleging that Appellees City of Covington, City Counsel of Covington, building inspector James Berry, Judge John Ott, and Superior Court of Newton County violated his constitutional rights under the First, Fifth, and Fourteenth Amendments of the United States Constitution as well as his rights under the Georgia State Constitution. Based upon our review of the record, we conclude the district court did not err in dismissing Appellant's action because we lack jurisdiction to review Appellant's claims pursuant to the Rooker-Feldman doctrine.

Under the Rooker-Feldman doctrine, federal courts do not have jurisdiction over challenges to final judgments of a state court judicial proceeding even if those challenges allege that the state court's action was unconstitutional. District of Columbia Court of Appeals v. Feldman, 103 S. Ct. 1303, 1317 (1983); Rooker v. Fidelity Trust Co., 44 S. Ct. 149, 150 (1923). This doctrine applies not only to bar claims actually raised in the state court proceedings, but also bar claims that are inextricably intertwined with the state court's judgment. Powell v. Powell, 80 F.3d 464, 466-67 (11th Cir. 1996).

In this case, Appellant's claims arise out of the dismissal of his state court action wherein he challenged the right of government officers to condemn his real property. Appellant pursued his claims to the appellate level before government officers foreclosed and then demolished his real property. Instead of raising any additional claims based upon the destruction of his property, Appellant waited 11 months until his state court action was dismissed. Appellant then proceeded to federal court to raise federal constitutional claims based upon the destruction of his property. Appellant is barred, however, from raising these claims in federal court because he had a reasonable opportunity to raise them in state court and they are inextricably intertwined with the state court judgment.

AFFIRMED.

APPENDIX C -
EXCERPTS OF DOCKET SHEET FOR CASE OF UNITED STATES V. GEORGIA, ET AL.

Docket for 04-1203

No. 04-1203
Vide: 04-1236
Title: United States, Petitioner
v.
Georgia, et al.
Docketed: March 9, 2005
Lower Ct: United States Court of Appeals for the Eleventh Circuit
Case Nos.: (02-10168-GG)
Decision Date: September 16, 2004
Rehearing Denied: December 9, 2004
Questions Presented

--------Date------	----------Proceedings and Orders ----------
Mar 9 2005	Petition for a writ of certiorari filed. (Response due April 8, 2005)
Mar 23 2005	Waiver of right of respondent Tony Goodman to respond filed.
Mar 31 2005	Order extending time to file response to petition to and including April 15, 3005.
Apr 15 2005	Brief of respondents Georgia, et al. In opposition filed. VIDED.
Apr 25 2005	Reply of petitioner United States filed.
Apr 26 2005	DISTRIBUTED for Conference of May 12, 2005.
May 9 2005	DISTRIBUTED for Conference of May 12, 2005.
May 16 2005	May 16, 2005 Petition GRANTED. The case is consolidated with No. 04-1236 and a total of one hour is allotted for oral argument.

. . .

Jan 10 2006	Judgment REVERSED and case REMANDED Scalia, J., delivered the opinion for a unanimous Court. Stevers, J., filed a concurring opinion, in which Ginsburg, J., joined.

...

APPENDIX D -

[RECEIVED JAN 6-2006 OFFICE OF THE CLERK SUPREME COURT, U.S.]

NO. 05-637

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2005

IRENE L. STEPHENS,

Petitioner,

vs.

GEORGIA DEPARTMENT OF TRANSPORTATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONER'S MOTION TO CONSOLIDATE CASE WITH THE CASE OF MARSHALL v. MARSHALL, NO. 04-1544

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332-0636

QUESTIONS PRESENTED

1. WHETHER THE DISTRICT COURT FAILED TO ADJUDICATE THE PETITIONER'S CASE AND CLAIMS PROPERLY.

2. WHETHER THE DISTRICT COURT WAS REQUIRED TO HONOR THE JUDICIAL DETERMINATIONS AS MADE AND RENDERED BY THE GEORGIA DEPARTMENT OF LABOR AGAINST THE RESPONDENT IN THE PETITIONER'S FAVOR.

3. WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS SHOULD HAVE REVERSED THE JUDGMENT OF THE DISTRICT COURT.

4. WHETHER, UNDER THE CIRCUMSTANCE, EVIDENCE AND FACTS OF THE CASE, WOULD O.C.G.A. § 34-8-223(a) AND/OR O.C.G.A. § 34-8-223(b) PROVIDE AN EXCEPTION TO TITLE 28 U.S.C. § 1738.

5. WHETHER OR NOT UNDER THE CIRCUMSTANCES, EVIDENCE AND FACTS OF THIS CASE DOES CONFIDENTIALITY EXIST AT THE TIME AN EMPLOYER SCHEDULES AN APPOINTMENT WITH A LICENSED HEALTH CARE PROVIDER, AND THE PROVIDER AGREES TO ACCEPT PAYMENT FOR THE SERVICES TO BE

RENDERED TO THE EMPLOYEE UNDER AND PURSUANT TO THE EMPLOYEES HEALTH INSURANCE COVERAGE.

6. DID THE GEORGIA ATTORNEY GENERAL AND THE OFFICE OF THE ATTORNEY GENERAL EXCEED THE LIMIT OF THE POLICE POWERS OF THE STATE CONFERRED UPON THE STATE BY THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND O.C.G.A. § 34-8-2 OR THE CONSTITUTION OF THE STATE OF GEORGIA

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RELEVANT PROCEEDINGS

The judgment of the Eleventh Circuit Court of Appeals in Atlanta, Georgia was entered on May 31, 2005. Petitioner sought a timely rehearing of the decision by the panel and sought an en banc determination which was denied on August 17, 2005.

Petitioner filed Petition for Writ of Certiorari on November 14, 2005 and was placed on the docket November 18, 2005 as No. 05-637. The due date for a brief in opposition was December 19, 2005. On December 14, 2005 the Respondents counsel filed a waiver with the court intending not to file a response on behalf of the Respondent, at least three days early. The instant case is scheduled for conference on January 6, 2006.

STATEMENT OF THE REASONS FOR GRANTING PETITIONERS MOTION TO CONSOLIDATE CASE WITH MARSHALL V. MARSHALL, NO. 04-1544

Like the Marshall case Petitioner advances the instant case also has many of the same underlying issues that are crucial to the foundation of jurisprudence in this Republic including the balance of power between the state and federal courts:

A. The Georgia Attorney General and The Office Of The Attorney General of Georgia and Its Suppression of Evidence In The Instant Case Below.

On or about June 19, 2003, during the proceeding of the instant case at the United States District Court in Atlanta, Georgia, Petitioner telephoned the Respondent's former counsel at the Office of the Attorney General of Georgia. At the same time, Petitioner requested a copy of the Employee Handbook, which was issued to Petitioner at the time that the Respondent hired Petitioner under and pursuant to its terms. Presently, the Respondent's former attorney fraudulently advanced and stated, " We did not have a copy of that employee handbook it was not retained by the Defendant." The

Respondent's former counsel pursuant to the Petitioner's discovery request tendered two of the Respondent's employment handbooks of January, 2002 and November, 2003 of no legal existence during Petitioners employment with the Respondent.[1]

The failure and/or refusal of the Respondent and Respondent's counsel to preserve and provide the Petitioner with the Petitioner's employee handbook as Respondent provided the Petitioner during the Petitioners employment with Respondent at the Federal District Court in Georgia is direct evidence of suppression of evidence in the instant case by the Georgia Attorney General and the Office of the Attorney General of Georgia, has resulted in at a minimum fraud against the Petitioner:

- Constructive Fraud, 38 Cal. Rpt. 148, 157. See 437

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1. Petitioner 1994 DOT Employee Handbook is located at: R4-73, Exhibits A and B as attached thereto.

S.W.2d 20, 28

- Extrinsic Fraud. 468 S.W. 2d 160, 163. See 247 P.2d 801, 803

- Fraud in the Factum. 5 S.E 2d 138, 141.

It is the Petitioner's contention that the decisions of the federal court's in Georgia could not have been issued on the merits of the case without the evidence suppressed by the Georgia Attorney General and the Office of the Attorney General of Georgia and other evidence stricken from the record by the lower court's in Georgia.

It is the Petitioner's contention that O.C.G.A. § 34-8-222(b)[2] barred the Atlanta, Georgia Federal Courts ruling in

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[2] (b) Within 15 days after the decision of the board of review has become final, any party aggrieved thereby may secure judicial review by filing a petition against the Commissioner in the superior court of the county where the employee was last employed. In the event the individual was last employed in another state, such appeal shall be filed in Fulton County, Georgia. Any other party to the proceeding before the board of review shall be made a respondent. The petition, which need not be verified but which shall state specifically the grounds upon which a review is sought, shall

favor of the Respondent in the instant case. A Respondent-Defendant employer may not lose a State employment appeal

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be served upon the Commissioner or upon such person as the Commissioner may designate, and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are respondents. The Commissioner shall mail one such copy to each such respondent. Within 30 days after the service of the petition, the Commissioner shall certify and file with the superior court all documents and papers and a transcript of all testimony taken in the matter, together with the board of review's findings of fact and decision therein. The Commissioner shall not be required to furnish any person with a copy of the aforementioned documents, papers, or transcripts or the original of these items prior to the Commissioner's filing these items with the court. The Commissioner may also, in his or her discretion, certify to such court questions of law involved in any decision. As a guide for future interpretation of the law, when the Commissioner is aggrieved by any decision of the board of review or deems such decision contrary to the law and no other party enters an appeal therefrom, the Commissioner may, within 20 days after such decision has become final, appeal and certify to the superior court questions of law therein involved. The court shall consider and determine the same and enter a decree accordingly, which shall be subject to further appeal by the Commissioner. In any judicial proceeding under this Code section, the **findings of the board of review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law**. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases to which the state is a material party and cases arising under Chapter 9 of this title.

case, file no appeal of the same and later in the instant case below commit fraud by way of the Respondent's former counsel, denying the Petitioner due process, so as to aid the Respondent to avoid legal liability of the Respondent's conduct, as committed against the Petitioner with the expectancy of the federal judiciary to reverse the settled findings of fact in favor of the Petitioner. In the philosophy of Kant, a contradiction in thought, unavoidable by the reason alone. Moreover, the procedural posture of the Respondent, the suppression of evidence by the Georgia Attorney General and the Office of the Attorney General of Georgia and the resulting federal court judgments in favor of the Respondent-Defendant is an antinomy of the foundation of this Republics jurisprudence. More than one-hundred and eighty years ago this Court explained:

> "The general rule implemented by the full faith and credit statute - - that parties should not be permitted to relitigate issues that have been resolved by courts of competent jurisdiction - - predates the republic. It "has

> found its was into every system of jurisprudence, not only from its obvious fitness and propriety, but because without it, an end could never be put to litigation." **Hopkins v. Lee**, 6 Wheat. 109 (1821).

It is the Petitioner's contention the doctrines of res judicata and collateral estoppel, applicable through Title 28 U.S.C. § 1738, protect the finality of prior judgments and judicial determinations. The instant case is another clear illustration of the reasons for these doctrines. As the Court has very recently explained:

> 28 § 1738 requires federal courts to give preclusive effect to any state court judgment that would have preclusive effect under the laws of the State in which the judgment was rendered . . . This statute has long been understood to encompass the doctrines of res *judicata*, or "claim preclusion," and collateral estoppel, or "issue preclusion." See **Allen v. McCurry**, 449 U.S. 90, 94-96 (1980).

This Court has said in the case of **Riggins v. Nevada**:

> "bad-faith failure to preserve potentially useful evidence constitutes a due process violation"[3]

---

3. **Riggins v. Nevada**, 504 U.S. 127 (112 S.Ct. 1810, 1817, 118 L.Ed.2d 479). Quoting **Arizona v. Youngblood**, 488 U.S.

The Georgia Appeals Court said in the case of **Dodd v. City of Gainsville** :

> "As the trial court noted in it's order, where the parties have equal opportunities for knowing the truth,'a party grossly failing to inform himself must take the consequences of his neglect."[4]

The Georgia Court of Appeals has said in the case of **Clark v. State**:

> "The Supreme Court held in **Ashe** that the Fifth Amendment guarantee against double jeopardy embodies collateral estoppel as a constitutional requirement. And the protections afforded by the double jeopardy clause are binding upon the states through the Fourteenth Amendment. **Benton v. Maryland**, 395 U.S. 784 (89 SC 2056, 23 L.Ed.2d 707)." [5]

This Court has said in the case of **Hafer v. Melo et al.**

> "That contention ignores this Court's holding that §

51, 58 (109 S.Ct. 333, 333, 102 L.Ed. 2d 281 (1988)

4. Citing **Dodd v. City of Gainsville**, 250 Ga. App. 722 (2001)

5. Citing **Clark v. State**, 194 Ga. App. 280, 281 (1990) 390 S.E.2d 425. Quoting **Ashe v. Swenson**, 397 U.S. 436 (90 S.Ct. 1189, 1190, 25 L.Ed.2d 469 (1970) and **Benton v. Maryland**, 395 U.S. 784 (89 S.Ct. 2056, 2057, 23 L.Ed.2d 707).

1983 was enacted to enforce provision of the Fourteenth Amendment against those who carry a badge of a State and represent it in some capacity whether they act in accordance with their authority or misuse it. **Scheuer v. Rhodes**, 416 U.S. 232, 243." See **Hafer v. Melo et al.**, 502 U.S. 21 (1991), No. 90-681.

B. The District Court never conducted an evidentiary hearing and severely circumscribed the Petitioner's presentation of evidence and enjoined the Petitioner

The District Court never conducted an evidentiary hearing to establish respondent's discovery abuses the court simply accepted the unsubstantiated, untrue, and contested accusations of the Respondent's counsel and witnesses as truthful facts. Additionally, without conducting any hearing whatsoever the District Court severely circumscribed the Petitioner's presentation of evidence by striking the Bankruptcy files of two (2) of the Respondent's employee's and other portions of the record from the record. And asserting its own jurisdiction, the district court conducted a "de novo" review of the settled findings of fact of the

Petitioner's employment appeal case.

C. Nowhere in its May 31, 2005, eleven (11) page opinion of the instant case below does the United States Court of Appeal for the Eleventh Circuit cite or discuss the statutory grant of federal question jurisdiction (28 U.S.C. § 1331), to the federal court.

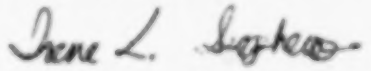
CONCLUSION

The issues of direct estoppel, Rooker-Feldman Doctrine, Title 28 U.S.C. § 1738 were raised by Petitioner on direct review both below and before the Honorable Court. The instant case may be one of first impression for the Honorable Court applying Rooker-Feldman Doctrine merged for a Petitioner-Plaintiff-Claimant.

Petitioner's contention the court's decision to be rendered in Marshall v. Marshall is crucial to the court's determination in the instant case. The Petitioner respectfully request the Honorable Court to grant this motion and Pursuant to Title 28 U.S.C § 1254(1) grant Petitioner's writ

of certiorari followed by reversal and remand to the United States Court of Appeals for the Eleventh Circuit for further consideration and/or a grant of equitable relief from the Honorable Court.

Respectfully submitted,



Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332.0636

CERTIFICATION OF COMPLIANCE WITH RULE 21

Petitioner, Irene L. Stephens, hereby certifies that this Motion is limited to intervening circumstances of substantial or controlling effect and otherwise is in compliance with Rule 21 and 27.3, and is presented in good faith and not for delay.

Irene L. Stephens

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332.0636

CERTIFICATION OF SERVICE AND VERIFICATION

Pursuant to Supreme Court Rules 27.3, 29 and 33.2 and Title 28, U.S.C. Section 1746, I hereby state that I have this day served one (1) copy of PETITIONER'S MOTION TO CONSOLIDATE CASE WITH THE CASE OF MARSHALL v. MARSHALL, NO. 04-1544, at the time of filing upon G.Melton Mobley, Jr, Lokey, Mobley & Doyle, L.L.C., 8425 Dunwoody Place, Atlanta, GA 30350, by placing a copy of the same into an envelope with no less than first-class postage prepaid to ensure delivery and placing the same into the United States Postal Service on this 4th day of January, 2006.

Irene L. Stephens
Affiant

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454

APPENDIX E -
DECEMBER 29, 2005 LETTER TO PETITIONER FROM C. VASIL, CHIEF DEPUTY CLERK SUPREME COURT OF THE UNITED STATES

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

December 29, 2005

Ms. Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454

Re: Irene L Stephens
v. Georgia Department of Transportation
No. 05-637

Dear Ms. Stephens:

The motion to defer consideration of the above-entitled petition for a writ of certiorari was received December 27, 2005, and is herewith returned. The Court does not make public that a pending case is being held for a case in which certiorari was granted, nor does the Court act on motions to hold a case for a granted case.

Sincerely,
WILLIAM K. SUTER, Clerk

By
s/
Christopher W. Vasil
Chief Deputy Clerk

cc: G. Melton Mobley

APPENDIX F -

[RECEIVED DECEMBEk 27, 2005 OFFICE OF THE CLERK SUPREME COURT, U.S.]

NO. 05-637

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2005

IRENE L. STEPHENS,

Petitioner,

vs.

GEORGIA DEPARTMENT OF TRANSPORTATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITIONER'S MOTION FOR CASE TO BE CONTINUED PENDING THE COURTS DECISION OF MARSHALL v. MARSHALL, NO. 04-1544

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332-0636

QUESTIONS PRESENTED

1. WHETHER THE DISTRICT COURT FAILED TO ADJUDICATE THE PETITIONER'S CASE AND CLAIMS PROPERLY.

2. WHETHER THE DISTRICT COURT WAS REQUIRED TO HONOR THE JUDICIAL DETERMINATIONS AS MADE AND RENDERED BY THE GEORGIA DEPARTMENT OF LABOR AGAINST THE RESPONDENT IN THE PETITIONER'S FAVOR.

3. WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS SHOULD HAVE REVERSED THE JUDGMENT OF THE DISTRICT COURT.

4. WHETHER, UNDER THE CIRCUMSTANCE, EVIDENCE AND FACTS OF THE CASE, WOULD O.C.G.A. § 34-8-223(a) AND/OR O.C.G.A. § 34-8-223(b) PROVIDE AN EXCEPTION TO TITLE 28 U.S.C. § 1738.

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RELEVANT PROCEEDINGS

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Like the Marshall case Petitioner advances the instant

case also has many of the same underlying issues that are crucial to the foundation of jurisprudence in this Republic including the balance of power between the state and federal courts:

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Respondent's employment handbooks of January, 2002 and November, 2003 of no legal existence during Petitioners employment with the Respondent.[1]

The failure and/or refusal of the Respondent and Respondent's counsel to preserve and provide the Petitioner with the Petitioner's employee handbook as Respondent provided the Petitioner during the Petitioners employment with Respondent at the Federal District Court in Georgia is direct evidence of suppression of evidence in the instant case by the Georgia Attorney General and the Office of the Attorney General of Georgia, has resulted in at a minimum fraud against the Petitioner:

- Constructive Fraud, 38 Cal. Rpt. 148, 157. See 437 S.W.2d 20, 28
- Extrinsic Fraud. 468 S.W. 2d 160, 163. See 247 P.2d 801, 803

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1. .Petitioner 1994 DOT Employee Handbook is located at: R4-73, Exhibits A and B as attached thereto.

Fraud in the Factum. 5 S.E 2d 138, 141.

It is the Petitioner's contention that O.C.G.A. § 34-8-222(b)[2] barred the Atlanta, Georgia Federal Courts ruling in

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[2] (b) Within 15 days after the decision of the board of review has become final, any party aggrieved thereby may secure judicial review by filing a petition against the Commissioner in the superior court of the county where the employee was last employed. In the event the individual was last employed in another state, such appeal shall be filed in Fulton County, Georgia. Any other party to the proceeding before the board of review shall be made a respondent. The petition, which need not be verified but which shall state specifically the grounds upon which a review is sought, shall be served upon the Commissioner or upon such person as the Commissioner may designate, and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are respondents. The Commissioner shall mail one such copy to each such respondent. Within 30 days after the service of the petition, the Commissioner shall certify and file with the superior court all documents and papers and a transcript of all testimony taken in the matter, together with the board of review's findings of fact and decision therein. The Commissioner shall not be required to furnish any person with a copy of the aforementioned documents, papers, or transcripts or the original of these items prior to the Commissioner's filing these items with the court. The Commissioner may also, in his or her discretion, certify to such court questions of law involved in any decision. As a guide for future interpretation of the law, when the Commissioner is aggrieved by any decision of the board of review or deems such decision contrary to the law and no other party enters an appeal therefrom, the Commissioner may, within 20 days after such decision has become final, appeal and certify to the superior court questions of law therein involved. The court shall consider and determine the

favor of the Respondent in the instant case. A Respondent-Defendant employer may not lose a State employment appeal case, file no appeal of the same and later in the instant case below commit fraud by way of the Respondent's former counsel, denying the Petitioner due process, so as to aid the Respondent to avoid legal liability of the Respondent's conduct, as committed against the Petitioner with the expectancy of the federal judiciary to reverse the settled findings of fact in favor of the Petitioner. In the philosophy of Kant, a contradiction in thought, unavoidable by the reason alone. Moreover, the procedural posture of the Respondent, the suppression of evidence by the Georgia Attorney General and the Office of the Attorney General of Georgia and the

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same and enter a decree accordingly, which shall be subject to further appeal by the Commissioner. In any judicial proceeding under this Code section, the **findings of the board of review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law**. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases to which the state is a material party and cases arising under Chapter 9 of this title.

resulting federal court judgments in favor of the Respondent-Defendant is an antinomy of the foundation of this Republics jurisprudence. More than one-hundred and eighty years ago this Court explained:

> "The general rule implemented by the full faith and credit statute - - that parties should not be permitted to relitigate issues that have been resolved by courts of competent jurisdiction - - predates the republic. It "has found its was into every system of jurisprudence, not only from its obvious fitness and propriety, but because without it, an end could never be put to litigation." **Hopkins v. Lee**, 6 Wheat. 109 (1821).

It is the Petitioner's contention the doctrines of res judicata and collateral estoppel, applicable through Title 28 U.S.C. § 1738, protect the finality of prior judgments and judicial determinations. The instant case is another clear illustration of the reasons for these doctrines. As the Court has very recently explained:

> 28 § 1738 requires federal courts to give preclusive effect to any state court judgment that would have preclusive effect under the laws of the State in which the judgment was rendered . . . This statute has long been understood to encompass the doctrines of res *judicata* , or "claim preclusion," and collateral estoppel, or "issue preclusion." See **Allen v. McCurry**, 449 U.S. 90, 94-96 (1980).

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"bad-faith failure to preserve potentially useful evidence constitutes a due process violation"[3]

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The Georgia Court of Appeals has said in the case of **Clark v. State**:

> "The Supreme Court held in **Ashe** that the Fifth Amendment guarantee against double jeopardy embodies collateral estoppel as a constitutional requirement. And the protections afforded by the double jeopardy clause are binding upon the states through the Fourteenth Amendment. **Benton v.**

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3. **Riggins v. Nevada**, 504 U.S. 127 (112 S.Ct. 1810, 1817, 118 L.Ed.2d 479). Quoting **Arizona v. Youngblood**, 488 U.S. 51, 58 (109 S.Ct. 333, 333, 102 L.Ed. 2d 281 (1988)

4. Citing **Dodd v. City of Gainsville**, 250 Ga. App. 722 (2001)

Maryland, 395 U.S. 784 (89 SC 2056, 23 L.Ed.2d 707)." [5]

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"That contention ignores this Court's holding that § 1983 was enacted to enforce provision of the Fourteenth Amendment against those who carry a badge of a State and represent it in some capacity whether they act in accordance with their authority or misuse it. **Scheuer v. Rhodes**, 416 U.S. 232, 243." See **Hafer v. Melo et al.**, 502 U.S. 21 (1991), No. 90-681.

B. The District Court never conducted an evidentiary hearing and severely circumscribed the Petitioner's presentation of evidence

The District Court never conducted an evidentiary hearing to establish respondent's discovery abuses the court simply accepted the unsubstantiated, untrue, and contested accusations of the Respondent's counsel and witnesses as truthful facts. Additionally, without conducting any hearing whatsoever the District Court severely circumscribed the Petitioner's presentation of evidence by striking the

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5. Citing **Clark v. State**, 194 Ga. App. 280, 281 (1990) 390 S.E.2d 425. Quoting **Ashe v. Swenson**, 397 U.S. 436 (90 S.Ct. 1189, 1190, 25 L.Ed.2d 469 (1970) and **Benton v. Maryland**, 395 U.S. 784 (89 S.Ct. 2056, 2057, 23 L.Ed.2d 707).

Bankruptcy files of two (2) of the Respondent's employee's and other portions of the record from the record. And asserting its own jurisdiction, the district court conducted a "de novo" review of Petitioner's employment appeal case.

C. Nowhere in its May 31, 2005, eleven (11) page opinion of the instant case below does the United States Court of Appeal for the Eleventh Circuit cite or discuss the statutory grant of federal question jurisdiction (28 U.S.C. § 1331), to the federal court.

D. Ensure that valid State judgments are given and granted the proper legal consideration when subsequent legal claims, as based upon the prior State legal judgement are raised in the federal courts.

CONCLUSION

The issues of res judicata, collateral estoppel, Rooker-Feldman Doctrine, Title 28 U.S.C. § 1738 were raised by Petitioner on direct review both below and before the Honorable Court. It is the Petitioner's contention the court's decision to be rendered in Marshall v. Marshall would be crucial to the court's determination in the instant

case. And the instant case may be one of first impression for the Honorable Court applying Rooker-Feldman, res judicata, collateral estoppel, Title 28 U.S.C. § 1738 to the Respondent-Defendant-State vs. the prior Rooker-Feldman cases involving multiple cases involving Plaintiff's and the now pending Marshall case involving multiple cases of a Petitioner.

At a minimum, a final decision of petitioner's certiorari petition should await final disposition of the now pending Marshall v.Marshall case, and pursuant to Title 28 U.S.C § 1254(1) grant Petitioner's writ of certiorari followed by reversal and remand to the United States Court of Appeals for the Eleventh Circuit for further consideration and/or a grant of equitable relief from the Honorable Court.

Respectfully submitted,

Irene L. Stephens

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332.0636

CERTIFICATION OF COMPLIANCE WITH RULE 21

Petitioner, Irene L. Stephens, hereby certifies that this Motion is limited to intervening circumstances of substantial or controlling effect and otherwise is in compliance with Rule 21, and is presented in good faith and not for delay.

Irene L. Stephens

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(757) 332.0636

CERTIFICATION OF SERVICE AND VERIFICATION

Pursuant to Supreme Court Rules 29 and 33.2 and Title 28, U.S.C. Section 1746, I hereby state that I have this day served one (1) copy of PETITIONER'S MOTION FOR CASE TO BE CONTINUED PENDING THE COURTS DECISION OF MARSHALL v. MARSHALL, NO. 04-1544, at the time of filing, upon G.Melton Mobley, Jr, Lokey, Mobley & Doyle, L.L.C., 8425 Dunwoody Place, Atlanta, GA 30350, by placing a copy of the same into an envelope with no less than first-class postage prepaid to ensure delivery and placing the same into the United States Postal Service on this 27th day of December, 2005.

Irene L. Stephens
Affiant

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454

APPENDIX G - EXCERPTS OF DOCKET SHEET FOR CASE OF RIDEOUT V. UNITED STATES

Docket for 03-9402

No. 03-9402
Title: Kevin A. Rideout, Petitioner
v.
United States.
Docketed: March 17, 2004
Lower Ct: United States Court of Appeals for the Fourth Circuit
Case Nos.: (02–4302)
Decision Date: November 13, 2003
Rehearing Denied: December 12, 2003

--------Date------	------Proceedings and Orders ----------
Mar 11 2004	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due April 16, 2004)
Apr 7 2004	Order extending time to file response to petition to and including May 17, 2004.
May 12 2004	Order further extending time to file response to petition to and including May 28, 2004.
May 27 2004	Brief of respondent United States in opposition filed.
Jun 9 2004	DISTRIBUTED for Conference of June 24, 2004.
Jun 28 2004	Petition DENIED.
Jul 23 2004	Petition for Rehearing filed.
Jul 29 2004	Application (04A99) to suspend the effect of the denial of the petition for a writ of certiorari, submitted to The Chief Justice.
Jul 30 2004	Application (04A99) denied by The Chief Justice.

Sep 20	2004	DISTRIBUTED for Conference of September 27, 2004.
Jan 18	2005	DISTRIBUTED for Conference of January 21, 2005.
Jan 24	2005	Motion to proceed in forma pauperis and petition for rehearing GRANTED. The order entered June 28, 2004, denying the petition for a writ of certiorari is vacated. The petition for a writ of certiorari is granted. Judgment VACATED and case REMANDED for further consideration in light of United States v. Booker, 543 U.S _____ (2005).
Feb 25	2005	JUDGMENT ISSUED.
Apr 4	2005	Acknowledgment of receipt (03/01/05) of judgment from Clerk, United States Court of Appeals for the Fourth Circuit received.

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APPENDIX H - EXCERPTS OF DOCKET SHEET FOR CASE OF UNITED STATES V. BOOKER

Docket for 04-104

No. 04-104
Title: United States, Petitioner
v.
Freddie J. Booker
Docketed: July 21, 2004
Lower Ct: United States Court of Appeals for the Seventh Circuit
Case Nos.: (03-4225)
Decision Date: July 9, 2004
Questions Presented

--------Date------	-------Proceedings and Orders ----------
Jul 21 2004	Petition for a writ of certiorari filed. (Response due July 28, 2004)
. . .	
Jan 12 2005	Judgment is AFFIRMED and case REMANDED. Stevens, J., delivered the opinion fo the Court in part, in which Scalia, Souter, Thomas, and Ginsburg, JJ., joined. Breyer, J., delivered the opinion of the Court in part, in which Rehnquist, C. J., and O'Connor, Kennedy, and Ginsburg, JJ., joined. Stevens, J., filed an opinion dissenting in part, in which Souter, J., joined, and which Scalia, J., joined except for Part III and dissenting in part, in which Rehnquist, C.J., and O'Connor and Kennedy, JJ., joined.
Feb 14 2005	JUDGMENT ISSUED
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APPENDIX I -
EXCERPTS OF DOCKET SHEET FOR CASE OF UNITED STATES V. FANFAN

Docket for 04-105

No. 04-105
Title: United States, Petitioner
v.
Duncan Fanfan
Docketed: July 21, 2004
Lower Ct: United States Court of Appeals for the First Circuit
Case Nos.: (04-1946)
Rule 11
Questions Presented

--------Date------	--------Proceedings and Orders ----------
Jul 21 2004	Petition for a writ of certiorari filed. (Response due July 28, 2004)
. . .	
Jan 12 2005	Judgment is VACATED and case REMANDED. Stevens, J., delivered the opinion fo the Court in part, in which Scalia, Souter, Thomas, and Ginsburg, JJ., joined. Breyer, J., delivered the opinion of the Court in part, in which Rehnquist, C. J., and O'Connor, Kennedy, and Ginsburg, JJ., joined. Stevens, J., filed an opinion dissenting in part, in which Souter, J., joined, and in which Scalia, J., joined except for Part III and footnote 17. Scalia, J. and Thomas, J., filed opinions dissenting in part. Breyer, J., filed an opinion dissenting in part, in which Rehnquist, C.J., and O'Connor and Kennedy, JJ., joined.
Feb 14 2005	JUDGMENT ISSUED.
. . .	
Feb 14 2005	JUDGMENT ISSUED

APPENDIX J -
EXCERPTS OF DOCKET SHEET FOR CASE OF UNITED STATES V. PENARANDA

Docket for 04-59

No. 04-59
Title: United States, Petitioner
v.
Hector Penaranda and Luis Rojas
Docketed: July 13, 2004
Lower Ct: United States Court of Appeals for the Second Circuit
Case Nos.: (03-1055 (L), 03-1062 (L))
Decision Date: July 12, 2004

--------Date------	--------Proceedings and Orders ----------
Jul 13 2004	Certified questions filed.
Jul 15 2004	Record received from U.S.C.A. 2nd Circuit. (1 box)
Jan 18 2005	DISTRIBUTED for Conference of January 21, 2005.
Jan 24 2005	The question certified by the United States Court of Appeals for the Second Circuit is dismissed.
Oct 4 2005	Record returned to U.S.C.A.-Second Circuit

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